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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DAN YU, Defendant and Appellant.	H044305 (Santa Clara County Super. Ct. No. C1475343)

A jury convicted defendant of six counts of committing a lewd or lascivious act on a child. He argues the victim's testimony provided insufficient evidence to sustain the convictions, and the trial court erred by denying his motion for a new trial based on ineffective assistance of counsel. For the reasons stated here, we will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Jane Doe is the oldest of four children born to Chinese immigrants. Her best friend was defendant's daughter, A., who had emigrated with her parents from China. The families were close. Doe's mother was part owner of a holistic health clinic in the Silicon Valley, where Doe's father and A.'s mother worked.

In the spring of 2014 Doe was in second grade and A. was in third grade. On weekends they sometimes played together at the clinic and at A.'s house. They took an art class together, saw each other during the summer, and resumed art class in the fall. Doe's youngest sister was born in 2013 with a congenital disease, and had surgery for the

condition in January 2014. That summer Doe's father spent several weeks in China visiting his terminally ill mother. During that time, A.'s parents helped care for Doe, and A.'s father (defendant) helped with transportation. The Yus accepted $200 from Doe's parents as a thank-you, and the families also took a cruise together paid for by Doe's parents as further appreciation for the help.

While on the cruise in February 2015, Doe's mother asked defendant to help arrange the beds in one of the cabins. Doe's father became upset because his wife and defendant were alone in the room, and he believed defendant had been flirting with his wife. He confronted defendant but later apologized. Two months later, Doe's mother traveled with Doe's youngest sister to China for a second surgery. Between the cruise and the trip to China, Doe's parents argued because Doe's father believed defendant was texting Doe's mother.

On April 21, 2015, then eight-year-old Doe told her school teacher that she had been touched in her private area by a family friend. That evening Doe told an emergency response social worker that A.'s father had touched her private areas six times since 2014. The social worker related the disclosure to Doe's father and contacted the police. Santa Clara County Sheriff's Deputy Benjamin Hemeon responded, interviewed Doe, and recorded the meeting. Defendant was arrested later that day and his home was searched. A.'s mother called Doe's mother in China and told her what had happened. Doe's father did not discuss the matter with his wife until she returned home, and Doe's mother spoke with Doe about the allegations at that time.

TRIAL COURT PROCEEDINGS

Defendant was charged with six counts of committing a lewd or lascivious act on a child under 14. (Pen. Code, § 288, subd. (a).) Counts 1 through 3 were alleged to have occurred between March 1 and May 31, 2014, and counts 4 through 6 were alleged to have occurred between September 1, 2014 and November 30, 2014. The information was amended before trial to allege all counts occurring between January 1 and December 31,

2014. Trial commenced in February 2016. Defendant was assisted during trial by a Mandarin interpreter, and he, his wife, and Doe's father testified through interpreters.

Doe's Testimony

We relate Doe's testimony and recorded interview in detail as they are the gravamen of the prosecution's case, and defendant argues Doe's statements are not enough to sustain his convictions. We also relate Doe's father's testimony in detail as it is central to defendant's theory that Doe fabricated the allegations.

Doe testified to six instances when defendant touched her, beginning in the spring of 2014 when she was in second grade. Defendant's family lived in a one-bedroom apartment with a converted garage accessed by a separate entrance. The molests happened in that room. It had a washing machine, bed, bookshelves, desks, and a copy machine, and she recognized photographs of the room taken when the home was searched in 2015.

The first time defendant called her into the room by offering her candy. Defendant "made me sit on the bed and well, he was touching my leg." Then "he went a little bit higher," gave her "something" (she could not remember what), patted her head, said "something like" she was pretty, and let her go. Sometimes she "sat on his lap" when he sat on the bed, and she could not remember if the first time she sat next to him or on his lap.

The second time was "basically the same." Doe was running around and sat down to rest (she could not remember where) and defendant "patted" her leg and then "kind of went a little bit inwards." He touched her above the knee and moved his hand "the opposite direction of my knee" on the inner leg. It made her feel uncomfortable. Then she wasn't tired anymore and she ran away.

The third time defendant called Doe into the same room. She sat on his lap, and he patted her head. "He made me stand up," pulled her leggings partway down, said "it's okay," and used one or two fingers to "touch[] the middle part thingy" over her

underwear. (During her testimony Doe used a toy bear to show where defendant touched her, which the prosecutor identified as the bear's "vaginal area.") Then he pulled up her leggings, patted her head, and told her not to tell her parents. She was scared.

The fourth time in the same room, defendant removed Doe's pants or leggings (she could not remember what she had been wearing) and her underwear, and told her "to get on [her] tummy." He touched her on her buttocks with her legs bent and bottom pointed up. Then she "was flipped over on the bed" and he touched her vaginal area ("The part that I said before on the bear") with "part of his hand … and patting." As he was touching her he said "It's okay. Don't tell your parents." She stood up, put on her leggings and "still got something like a pat on the head." Defendant said "don't worry," and she left. That happened in second grade. The fifth and sixth times were "basically the same as the fourth time."

Either the fourth or fifth time she way lying on her tummy with her knees bent and bottom exposed, and she was given "something like a chapter book" to read. Defendant touched her bottom. She looked back and saw him holding something. She didn't know what it was, and he told her to keep reading. She answered "yes" when the prosecutor asked if she thought she "heard a sound like a photo." She said she heard a click, but she did not know "what kind of click," and she did not see anything because he was behind her. She got off the bed and pulled up "my leggings or whatever I was wearing"; defendant patted her head; said "good girl" and "something like 'don't tell your parents' "; and Doe left the room. That happened in the fall.

Doe remembered a time "toward the beginning" of the molests when defendant just looked at her front private part. He touched her bottom on that occasion. "Sometimes" when defendant touched her front private part and she "felt more uncomfortable than usual," she would "just mak[e] noises and flap [her] hands and kick [her] legs." Defendant would say "it's okay," put her legs down, and keep touching her.

Defendant did not touch Doe during the summer. The last touching happened in third grade, sometime after Halloween and before Christmas. Touchings occurred more in the fall than in the spring.

Sometime after the cruise Doe's father asked whether " 'something happen[ed] to you that you didn't really like' " at A.'s house, and she told him about the time she "was running and then [] stopped" because she was tired, "but [she] didn't know if that was an accident actually." She thought her father was overprotective because he would usually ask whether anything happened that she did not like when she went to a friend's house. She did not tell him about the other times because she was scared she would no longer be able to play with A. She told her teacher because she liked her and knew she could trust her, and that disclosure was triggered by her teacher checking her class for lice. The lice inspection caused her to remember having "something like lice" when she was younger and not liking it, and that made her think of the touchings which she also did not like.

Doe testified on cross-examination that of the six molests, "about three maybe" happened in the spring, but that number "could have been more, could have been less." She did not remember how long each molest lasted, but the first two times were very short. She did not remember where she had been running or where she sat down the second time. She did not remember her mother or father mad at anyone on the cruise. She did not remember her father being upset, or her father and defendant arguing. She did not remember asking her mother whether she still loved her father or her father saying her mother did not like him anymore. She stated "there might have been something like that, but I don't really remember." She did not remember her parents arguing before her mother went to China. She recalled that at some point after the cruise, her parents told her they had had an argument.

On redirect examination Doe said that after she met with Detective Hemeon her mother had told her about the argument she and her father had on the cruise and her father had told her "something" about what happened on the cruise.

Doe's Recorded Interview

Doe's recorded interview with Deputy Hemeon was admitted in evidence. Doe related that "A family friend touched me somewhere I didn't really like it" "around six" times on "six different days." The first time was in the spring in second grade; it happened three or four times in the spring and two or three times in the fall. Usually defendant called her when she and A. were watching TV or using the tablet. The first time defendant said " 'Come here, I just want to give you some candy.' " Doe drew a diagram of A.'s home, and explained: The first and second time "I was watching like around here" and "then he like makes me come into this room." "He sits and then lets me sit on [] his lap," and the first time "he just like pats my leg and then gives me some candy and then pats my head and lets me go." He said "I'm, like, really pretty," "Don't worry. It's okay," and he "just let me go like this - he would just push me."

The other times he would "start it off like that but he wouldn't just let me go after that." She was always wearing leggings or "skinny" "very tight" pants. The third time defendant removed her leggings and underpants, had her lie down, pulled her left leg to the left and her right leg to right, and "just like looked" and then flipped her over. He told her in Chinese in a quiet voice ("not as loud as both we talk") to flip over. At first she "just flipped over" and he "pushed [] up" her legs so she was kneeling. On her knees facing down "he would just look and just, like, gently touch" her bottom "for some reason." He "definitely touch[ed]" on "the bottom." He also touched her back. His touch was gentle; she thought he used one hand; and she agreed that he used a stroking or petting motion. Then he helped her up; helped her get dressed; said "It's okay. Don't tell your parents"; and let her go. The third time he pulled the blinds on the window and door, and she did not know why he did that.

The fourth time she "did the same thing" as the third time. She lay on her knees with her head and chest on the bed and her bottom in the air. She was curious about what he was doing, looked back, and saw him "holding out his phone or something," and

moving it from her view. He said in Chinese "Nothing to see. It's okay," and he "put my head back down … lightly." Doe heard a sound like taking a picture.

The fifth time he gave her "a chapter book" or "something long to read," and he would "touch like the front thing." She lay on her back, he gave her a book, he opened her legs, and "he would just, like, gently touch, like, the front thing." "Like, gently, like uh it kind of felt like at the aquarium…at the petting place" where "they only [let] you" do it "with, like two fingers." She did not know how many fingers he used because she was looking at the book, but it was "lightly" and "softly." She had never heard of a vagina; the area he touched was used to pee. On the fifth and sixth time she felt weird; she closed her legs and flapped her hands; he said "it's okay" and "don't be afraid"; and he repositioned her legs and continued. He only touched her on the "outside." She did not know how much time elapsed between touchings. The first three or four times happened in spring and the last few times in the fall. Nothing happened during the summer.

Toward the end of the interview, Doe offered: "The first time he did it … I didn't know why he was calling me all by myself into … that room. So the first time I was really scared … but then on the third time, like, when he first took off my pants … I was, like, really, really, really freaked out." She also told Deputy Hemeon that her father had asked her if defendant touched her "when I went home the first and second time," and she said no "[b]ecause technically he did not touch me." She said her father "always asks just in case" when she goes to someone's house. She continued: "But then like on the third time, like, like when he actually did it— … . I thought if like, if my dad ever asked— … . And then I said yes, he'll be mad at me. … Because I hadn't told him earlier."

Doe's Father's Testimony

Doe's father testified over three days, at times becoming dizzy and confused, and needing breaks. The first day he testified about the cruise, and his conversations with

Doe about defendant. Sometime after the cruise he asked Doe if defendant had touched her in her private area, and she said he had touched her accidently. Doe's father asked for more details, and she told him defendant had touched her many times. He did not contact the police because he did not think he would be believed in light of the argument on the cruise. Instead, he told Doe to stop going to defendant's house and to tell her teacher who would tell the police.

At that point the court excused the jury and queried Doe's father to determine whether he was competent to testify. He related having intermittent dizziness and confusion for several months, being dizzy and confused at that time, and not being able "to guarantee that the things I have said were accurate." The court noted that as his testimony progressed, his hands became shaky and his demeanor seemed unusual. With the jury present, the court again probed him about his mental state. He said he had experienced episodic dizziness and confusion for at least three years, he felt some dizziness that morning which became worse while testifying, and he presently could not focus. He was excused and his testimony resumed the next day.

On his second day testifying, Doe's father said he had no mental illness history or diagnosis, although he had experienced episodic confusion since 2014. He described an incident when his wife took him to the emergency room and he felt the doctors and nurses were not "real doctors and nurses," and possibly disguised police officers. He said he had asked Doe whether defendant had touched her because he had questioned defendant's character after the cruise and later noticed defendant texting his wife. He said Doe had told him defendant had touched her accidently, and when he asked a second time she said he touched her possibly three times. He did not know how to handle a situation where the touching may or may not be "on purpose," so he called a law office and was advised to call the police. A third time he asked Doe when defendant had touched her. He did not remember her answer or whether he asked her anything else.

Doe's father explained he did not tell the police who came to his home what Doe had told him because he did not know how serious it was. He thought the officer might think he had wanted Doe to tell her teacher. He was afraid defendant would say he was being framed because of the argument on the cruise, and he had not reported the incidents earlier. He did not tell Doe's mother about his conversations with Doe because he felt her relationship with defendant was "a bit unclear, ambiguous," and at the time he and his wife were focused on their youngest child's upcoming surgery. He told Doe to report the matter to her teacher, but he did not tell Doe to say that defendant had touched her. He did not tell his wife about Doe's disclosure to her teacher at the time because she was in China and "at her limits" caring for their youngest child. In the past he had asked Doe whether anyone had touched her when she returned from a friend's house, and she had never made an allegation like this one. He became dizzy and confused during cross-examination as he was questioned about his conversations with Doe, and his testimony concluded for the day.

The next day Doe's father testified that he could not remember the details of his third conversation with Doe, but his anger grew as a result. He had told Doe either he could report it to the police or she could tell her teacher; Doe preferred that he tell the police; but he urged her to be courageous and tell her teacher. He could not tell her what to say to her teacher because he did not know the details, and he did not help prepare her statement to the teacher.

In 2014 Doe's father and defendant were close; Doe's father trusted defendant so he did not ask Doe about "her encounters" at defendant's house at that time. He told the prosecutor about his conversations with Doe before the trial started because he felt he might be blamed for not having told the police. He explained Doe's fall 2014 schedule: "On weekends she had many classes. In the morning, if she had class, well at noon or around then, I'd bring her to the clinic. [¶] Sometimes [defendant] would bring [A.] to the clinic and they would eat. Then in the afternoon, [defendant] would take them to his

home where they would play, but I can't be sure about the exact times. [¶] It happened with some frequency. It's often that they would play at his house. Sometimes they would be at the clinic. Sometimes at his house."

Doe was recalled after her father testified, and asked whether "all those things really happened" ("yes"); whether she was making anything up ("no"); whether her father told her to make these things up ("no"); and whether her father had told her to tell her teacher ("no"). Doe remembered talking with her father about defendant, but she did not remember discussing whether to tell anyone, and no one told her to tell her teacher.

Doe's Mother's Testimony

Doe's mother testified regarding Doe's and A.'s relationship in 2014, their shared activities, how often they saw each other, and who drove Doe to and from her activities. She explained how thinly spread she was in 2014, with four children including a sick infant, a mother-in-law dying of cancer, a full-time nursing job, and clinic responsibilities. She had believed defendant was an honest person who would not harm Doe, and she had relied on defendant and A.'s mother to help with Doe. She discussed the incident on the cruise, and explained how she and her husband were under stress in 2015 with their youngest child facing a second surgery, how she learned of Doe's allegations from defendant's wife, and the conversation she and Doe had about the allegations when she returned from China. She discussed her husband's "on and off" dizziness and confusion, including an incident when she took him to the emergency room because he was experiencing dizziness, confusion, and memory loss, and he thought the doctors and nurses were police trying to catch him.

Other Prosecution Witnesses

The prosecution presented testimony from Doe's school teacher, the emergency social worker, Deputy Hemeon, an expert in child sexual abuse accommodation syndrome (CSAAS), detectives who executed the search warrant at defendant's

residence, and a detective who found no pictures of Doe or child pornography on defendant's cell phone and computers.

Defendant's Case

Defendant's wife, daughter, and a niece who lived with the family in 2014 testified that Doe was at their home only a few times in 2014 and she was never alone with defendant. Defendant's wife testified that they moved into the home in January 2014, a holdover tenant lived in the converted garage through the end of May; the Yus did not have a key to the garage, and had access to use the washing machine only when the tenant was home. Defendant's wife worked weekends and did the wash during the week.

Defendant testified that he never touched Doe inappropriately. He never brought Doe home from art class in the spring with A., and Doe never played with A. at his house in the spring. Doe was in defendant's home a few times during the summer, but only twice between September and December 2014—once in November before a hike and once in December after art class. He was never by himself in the converted garage when Doe was at his house in the fall.

Arguments and Verdict

The prosecutor argued that Doe's disclosure and trial testimony was that of a child recalling from her memory. Doe had described progressive predator conduct without understanding the sexual significance of defendant's acts; her behavior and manner of disclosing was consistent with child molestation; and she had no motive to lie.

Defense counsel argued that Doe lied at the behest of her irrational father who considered defendant a threat to his family and came up with a scheme to get him out of their lives. He stressed defendant's good character and happy marriage; lack of access to the converted garage in the spring; the improbability of any molests happening after art class in the spring because that would coincide with his wife returning from work; Doe

never being alone in defendant's home; A.'s cousin always being in the garage in the fall; and the fact that no photographs or pornography was found in defendant's possession.

After a seven-day trial, the jury deliberated for 90 minutes and convicted defendant on all counts.

New Trial Motion and Sentencing

Represented by new counsel, defendant moved for a new trial based on ineffective assistance of counsel and insufficient evidence. He also asked the trial court to sit as the thirteenth juror and grant a new trial on grounds that Doe was not credible. The motion was denied after an evidentiary hearing and argument. The trial court found Doe, her teacher, and her mother to be credible, and defendant's witnesses not credible. The court noted that Doe showed appropriate demeanor, emotions, and discomfort in defendant's presence, and she had a clear memory of events. It found her disclosure to her teacher credible, and any inconsistencies with precise details to be expected given the passage of time.

The court found Doe's mother forthright and credible throughout her testimony. In light of her testimony (her husband travelling to China to see his dying mother, her having to care for four children including an infant, her relying on defendant for transportation and babysitting so much that she paid him money at one point and later paid for a cruise for his family) the court found defendant's lack of contact testimony not credible.

The court noted that Doe's father had mental health issues affecting his credibility. It found not credible his testimony that he discussed with Doe how she should make the disclosure to her teacher.

Defendant was sentenced to 16 years in prison. The court imposed the middle term of six years on count 1 and consecutive two-year terms (one-third the middle term) for each remaining count. In pronouncing sentence, the trial court stated that "having heard the evidence in this case, having listened to the defendant's testimony and having

listened to the testimony of [] Doe, it is completely clear to me that the defendant in fact committed each of the molests for which the jury convicted him." "Doe was remarkably credible and the defendant was simply not credible. The defendant's witnesses lacked credibility, perhaps in part because they can't believe the defendant did such a thing. But the defendant lacked credibility because he did indeed commit the acts of which he's charged."

II. DISCUSSION

A. DOE'S TESTIMONY WAS NOT INHERENTLY IMPROBABLE

Defendant argues that Doe's descriptions of the molests was "so vague and inconsistent with the known facts as to be inherently improbable." A verdict will not be set aside on the grounds of inherent improbability based on doubts about a witness's credibility or conflicts in the evidence. (*People v. Ennis* (2010) 190 Cal.App.4th 721, 728.) " ' "To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions." ' " (*People v. Mayberry* (1975) 15 Cal.3d 143, 150.) Ultimately, we review sufficiency of the evidence claims for substantial evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) "[W]e review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) In so doing, we presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) " '[I]t is the exclusive province of the trial court or the jury to determine the credibility of a witness and the truth or falsity of the fact upon which a determination depends.' " (*Mayberry*, *supra*, at p. 150.)

Doe did not describe physically impossible events, nor were her statements facially false so as to render them valueless. She described six instances when defendant touched her, each time increasing in severity. She was certain all occurred in 2014 at defendant's home. It was up to the jury to decide whether to believe Doe and reject her father's recollection of their conversations. As noted by the trial court, the father's testimony was colored by mental health issues.

Defendant relies on *People v. Lang* (1974) 11 Cal.3d 134 to support his inherent improbability argument. In *Lang*, a nine-year-old testified that the defendant " 'put his hand in my vagina,' and rubbed inside and out" for five minutes with 12 adults in the room, and the child's twin sister gave nearly identical testimony. (*Id.* at p. 137.) Despite seven adults testifying that they had not seen either girl on the defendant's lap and the court's observation that the offenses occurred "in 'incredible' circumstances, at a party amid dozens of people 'milling around,' " the trial court convicted the defendant noting that there was conflicting testimony among the adult witnesses and it was " 'not impressed' " with the defendant as a witness. (*Id.* at pp. 137–138.) The Supreme Court held that appellate counsel was ineffective for failing to raise inherent improbability on appeal, and returned the matter to the court of appeal for briefing. (*Id.* at pp. 139–140, 142.) Unlike in *Lang*, here Doe described six incidents that occurred in private, both the jury and the trial court believed her, and the trial court remarked on her credibility, belying any suggestion that her description of events was not believable.

We also reject the argument that defendant was denied his right to confront Doe due to the manner in which she was examined by the prosecutor. Defendant posits that the jury was not given the opportunity to assess Doe's demeanor and credibility because her testimony was elicited through leading questions tantamount to a witness refusing to answer a question. We note that although defendant did not raise a confrontation clause objection in the trial court, he did object to the prosecutor's direct examination of Doe as leading. The issue was therefore preserved for appeal because it is based on an asserted

error having the additional consequence of violating his right to confrontation. See *People v. Partida* (2005) 37 Cal.4th 428, 435.

The right to confrontation secures an accused "an adequate opportunity to cross-examine adverse witnesses." (*United States v. Owen* (1988) 484 U.S. 554, 557.) Defendant had that opportunity. Doe testified about the incidents, and trial counsel cross-examined her. Defendant likens the instant case to *People v. Giron-Chamul* (2016) 245 Cal.App.4th 932, where a five-year-old witness testifying by video continually disappeared under the table and refused to answer questions. (*Id*. at pp. 947–965.) The witness in *Giron-Chamul* walked or crawled around the room, turned her back to the camera, and answered without the jury being able to see her. (*Ibid*.) She was prodded, cajoled, uncooperative (*ibid*.), and refused to answer hundreds of questions. (*Id*. at p. 968.) In contrast, Doe, who was nine when she testified, sat on the witness stand and answered the questions put to her by the prosecutor, defendant's attorney, and the court. At times she testified that she did not remember certain details, but she was cooperative, never refused to answer a question, and she described the incidents using her own words and gestures.

B. TRIAL COUNSEL DID NOT RENDER INEFFECTIVE ASSISTANCE

Defendant argues that the trial court erred by denying his motion for a new trial based on ineffective assistance of counsel. We review ineffective assistance claims de novo, deferring to the trial court's credibility determinations, and any express or implied factual finding supported by substantial evidence. (*People v. Taylor* (1984) 162 Cal.App.3d 720, 724.) We then measure the facts, as found by the trial court, against the constitutional standard. (*Id*. at p. 725.)

An ineffective assistance claim requires a showing both that counsel's performance fell below an objective standard of reasonableness and that defendant was prejudiced by the deficient performance. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) "Unless a defendant establishes the contrary, we shall presume that 'counsel's

performance fell within the wide range of professional competence and that counsel's actions and inactions can be explained as a matter of sound trial strategy.' " (*People v. Ledesma* (2006) 39 Cal.4th 641, 746.) "[C]ompetency is *presumed* unless the record *affirmatively* excludes a rational basis for the trial attorney's choice." (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1260.) "When a defendant makes an ineffectiveness claim on appeal, the appellate court must look to see if the record contains any explanation for the challenged aspects of representation. If the record sheds no light on why counsel acted or failed to act in the manner challenged, 'unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation' [citation], the case is affirmed [citation]." (*People v. Babbitt* (1988) 45 Cal.3d 660, 707.) To prove prejudice, a defendant must affirmatively show a reasonable probability of a more favorable result but for trial counsel's errors. (*Ledesma*, at p. 746.) A reasonable probability is "a probability sufficient to undermine confidence in the outcome." (*People v. Williams* (1997) 16 Cal.4th 153, 215.) Counsel's overall performance throughout the case must be assessed to evaluate reasonable performance. (*Kimmelman v. Morrison* (1986) 477 U.S. 365, 386.)

1. Impeachment of Witnesses

"[T]o what extent and how to cross-examine witnesses" are among "the wide range of tactical decisions competent counsel must make." (*People v. Cleveland* (2004) 32 Cal.4th 704, 746.) " 'As to whether certain witnesses should have been more rigorously cross-examined, such matters are normally left to counsel's discretion and rarely implicate inadequacy of representation.' " (*People v. Williams*, *supra*, 16 Cal.4th at p. 216.)

Communications between Doe and her father

Defendant argues that counsel was constitutionally ineffective for failing to impeach Doe and her father with facts which defendant argues support a "conspiracy of silence" between father and daughter demonstrating a fabricated disclosure. Based on

Doe's father's testimony that he and Doe had discussed defendant's conduct before Doe spoke to her teacher, defendant complains that Doe was not cross-examined about whether her father had instructed her to withhold that information and "pretend" that her teacher was the first person she told about the molests. Nor was Doe cross-examined or impeached regarding the circumstances of her disclosure to her father (at what point she told him about the molests, and why, if it was after the cruise, she would have related only one or two of the molests and still described them as possibly accidental, given the later occurrences). Defendant also complains that Doe's father was not cross-examined on why he harbored fears and felt he would be blamed had he notified the police of Doe's allegations.

Doe testified extensively about the conversations she and her father had before she disclosed to her teacher. She testified on direct examination that it was common for her father to ask whether something happened that she did not like when she went to someone's house. After the cruise her father asked her if anything had happened to her at defendant's house that she did not like, and she told him defendant had touched her "in the front" and patted her leg but she did not know whether it was an accident. She thought her father "brought it up for no reason" because he was over protective, and she did not tell him about the other incidents because she was worried she would not be able to play with A. anymore. She repeated on cross-examination that her father was "just overprotective" and would ask something like that when she visited most of her friends' homes.

Doe was recalled after her father testified and asked whether he had told her to make up the allegations, whether she and her father had talked about telling anyone (including her teacher) what had happened, and whether the molestations really happened. She was cross-examined twice about whether she and her father had discussed calling the police and talking to her teacher. The record amply shows Doe explained why she did not make a full disclose to her father, and she was thoroughly cross-examined

about their conversations. She may not have been probed regarding what appeared to be an inconsistent statement to Deputy Hemeon that her father had asked her sometime in 2014 ("when I went home like the first and second time") if defendant had touched her. But trial counsel may have made the tactical decision to let the apparent inconsistency stand, and to impeach Doe's testimony through other witnesses—particularly her father. The manner of cross-examination is "normally left to counsel's discretion and rarely implicate[s] inadequacy of representation." (*People v. Williams, supra*, 16 Cal.4th at p. 217; *People v. Ervin* (2000) 22 Cal.4th 48, 94 [courts "rarely second-guess counsel's cross-examination tactics"].)

The record also shows that Doe's father was examined on why he harbored fears and felt he would be blamed had he notified the police of Doe's allegations. On direct examination he testified that he had considered calling the police, but felt he would not be believed because he had argued with defendant. He also offered several reasons for not telling the police about his conversations with Doe: He "didn't know it was that serious;" he hadn't reported it right away; he was afraid the officer might think he wanted Doe to tell her teacher; he was afraid defendant would accuse him of framing him because of the argument; and it was a private family matter.

Given the extensive direct examination of Doe's father regarding his conversations with Doe and the decisions that followed—testimony which supported defendant's theory that Doe's father had motive to frame defendant—there is no merit to defendant's contention that trial counsel was deficient for not cross-examining on the subject. Repetitive questioning on exculpatory testimony is not the standard for competent cross-examination, particularly here where the record shows counsel exhaustively cross-examined Doe's father regarding his conversations with Doe in an effort to show that he had coached Doe on her disclosure and to purposefully withhold that fact from law enforcement.

Doe's motive to lie

Shortly before the preliminary hearing, Doe's mother discussed the cruise incident with the prosecutor who memorialized the conversation in a case note shared with defendant's attorney. The case note related that Doe's father became suspicious of defendant upon finding him helping Doe's mother arrange the beds in her cabin; that the situation resolved; that Doe's mother did not respond when Doe later asked "why her dad got mad"; that later still Doe asked her mother "something like Daddy said you don't love him anymore"; and Doe's mother told Doe she still loved him.

Based on that, defendant argues Doe "falsely testified that [she] knew nothing of the fight between her father and defendant on the cruise," and she was never asked about her statements reflected in the case note, which established that she had a motive to lie because they showed she feared her parents would be estranged "if the defendant remained in the picture" and she felt the need to help her father. Defendant argues that trial counsel was deficient for failing to confront Doe on the point and argue it to the jury.

We reject defendant's characterization of Doe's testimony as false based only on her mother's recollection of events, and we find no deficient performance in the manner trial counsel cross-examined Doe on her recollection of the cruise. Doe testified on direct examination that she did not remember her mother or father getting mad at anyone on the cruise, or hearing any kind of argument. She testified on cross-examination that she did not remember an argument between her father and defendant, her father being upset about something, her father saying her mother did not like him anymore, or asking her mother whether she still loved her father. But then she also said "there might have been something like that, but I don't really remember." The record shows trial counsel pressed Doe for her recollection about the cruise, and argued to the jury that Doe was lying at the behest of her father.

Details of the molests

Defendant argues that trial counsel was deficient for not impeaching Doe with inconsistencies between her direct examination testimony and her conversation with Deputy Hemeon, given the "annals of legal literature [] replete with a history of wrongful convictions in sexual assault prosecutions." But defendant also acknowledges that "cross-examination of a minor witness is a difficult matter," and that many of the inconsistencies "could be seen as minor and nuanced and the result of the failure of recollection of a small child."

We share that observation. Doe's testimony was consistent with the disclosure she had given Deputy Hemeon a year earlier. In both instances she stated that the first two times defendant gave her candy, touched her leg, patted her head, and told her she was pretty; the fourth time defendant removed Doe's pants and underwear, had her lie on her tummy with her legs bent, and touched her buttocks; and the fifth and sixth times, defendant removed her pants and underwear, and touched her vagina while she lay on her back. In both statements she said she was given a chapter book to read. In both she described turning to see defendant holding something and hearing a clicking sound; and she talked about flapping her arms when he touched her vagina. She told Deputy Hemeon that during the third encounter defendant removed her underwear, spread her legs and "just like looked" before flipping her onto her back and touching her back and buttocks. Her trial testimony regarding the third instance differed in that she described defendant touching her vagina over her underwear while she was standing. But she also testified to a time she thought happened "toward the beginning" without underwear when defendant looked at her front private part and also touched her bottom.

We find no deficient performance in trial counsel's cross-examination tactics. Doe provided damaging testimony, and counsel may have made the tactical decision not to provide her further opportunity to describe the molests, reconcile inconsistencies, and buttress her credibility.

Doe's veracity

Defendant argues that trial counsel was deficient for failing to impeach Doe with specific instances of dishonesty. He contends trial counsel should have called as a witness a receptionist who worked at her parents' clinic, who in a post-trial declaration stated that Doe frequently lied to her mother about doing her homework, and should have elicited from A. (who also supplied a post-trial declaration) that Doe lied about homework, pushing her sister, and her nanny's cooking.

Not introducing such evidence at trial is not a failure to meet the objective standard of care. As the trial court noted, trial counsel may reasonably have been of the view that it "might appear petty to impeach a child with lies that might not be uncommon … in that age group." Indeed, defendant acknowledges in his briefing to this court that the conduct described by the receptionist and A. were "minor instances of dishonesty in which perhaps many children would engage." Trial counsel may also have been of the view that having Doe's best friend testify that she was a liar would make A. appear biased and not credible.

2. Exculpatory Evidence

Post-trial declarations of tenant and student

In support of his new trial motion, defendant submitted post-trial declarations from the tenant who occupied the converted garage and a college student who lived with the Yu family in the spring of 2014. He argues that trial counsel was deficient for failing to call those witnesses to establish that it was "nearly physically impossible" the molests could have occurred at the times and place described by Doe. According to the garage occupant's declaration, he was subleasing from the former tenant and the Yus continued that sublease through May 2014. He was the only person with a key to the converted garage; the Yus were not allowed in the room when he was not there; he was in that room every Saturday and Sunday between 2:30 p.m. and 4:30 p.m.; A.'s mother would normally do laundry during the week when he was home; and he slept on a mattress on

the floor. He testified at the new trial hearing that he traveled to China for about 20 days in the March 2014, and he left his key with the family during that time. He testified at the new trial hearing that the Yu family did laundry several times a week, that most of the time he was home, but occasionally he left the door unlocked so they could finish. He testified that he rarely paid the rent with a check and most of the time he paid with cash.

In her declaration, the college student identified herself as the former tenants' daughter who continued to live with the Yu family during her last quarter at a local community college; she slept in the living room on a single bed; she moved out in July 2014; and the garage tenant was home while defendant's wife did laundry.

"To sustain a claim of inadequate representation by reason of failure to call a witness, there must be a showing from which it can be determined whether the testimony of the alleged additional defense witness was material, necessary, or admissible, or that defense counsel did not exercise proper judgment in failing to call him." (*People v. Hill* (1969) 70 Cal.2d 678, 690.) Defendant has not shown that the testimony was necessary because trial counsel elicited from other witnesses that he did not have access to the converted garage while it was occupied by the tenant. Defendant argues that the student would have established that Doe's recollection of the living room with a television and a couch was inaccurate. But defendant's wife testified at trial that the student slept on a twin bed in the living room, and at that time there was no sofa or television in that room. Further, the tenant's testimony that the family had access to the garage while he was away in March and that he occasionally left the door unlocked for the family to do laundry would have undercut defendant's position that he had no access to the room. The tenant's testimony that he usually paid rent in cash would have undercut the testimony of defendant's wife (and checks admitted in evidence) that the rent was paid by check. Given the conflicting testimony, trial counsel's decision not to call the witnesses was rational.

Character evidence regarding sex

Defendant argues that trial counsel was ineffective for failing to ask defendant's wife whether they had a normal sex life. Defendant introduced evidence through his wife, daughter, and niece that he was a family man engaged in healthy relationships. Defendant's wife testified that he was an honest man who would not lie, he was a good and gentle father who would joke with and never mistreat A., and he worked two jobs and took A. to her various activities. They had been married 16 years and had known each other for over 20 years. She knew him better than anyone in the world, and she did not did believe defendant touched Doe. A. testified that she liked her father because he was funny. The niece testified that defendant cooked meals for the family and taught her to drive. Trial counsel need not have asked defendant's wife whether they had a normal sex life. It would have had minimal probative value in light of the character evidence presented, and it did not relate to his conduct with children. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1309.)

Defendant argues that trial counsel was ineffective for failing to call an expert psychologist to testify that he was not a sexual deviant. While expert opinion testimony that a defendant shows no signs of sexual deviance is relevant character evidence in a child molestation case (*People v. Stoll* (1989) 49 Cal.3d 1136), it is not required to meet constitutional standards of competent representation. Consistent with courts of appeal that have found no deficient performance for failure to utilize a *Stoll* expert (*People v. Fernandez* (2013) 216 Cal.App.4th 540, 566–567; *People v. Brodit* (1998) 61 Cal.App.4th 1312, 1334), the trial court here observed: "I have myself seen Stoll experts testify, and that's risky testimony to present in a child molest case because the jury then is educated about a lot of aspects of child molestation. [¶] For example, jurors learn not all molesters are pedophiles, people who have happy relationships with their wives still commit the crime of molest. A lot of that testimony comes out. [¶] The diagnosis of pedophilia and the criteria set forth in the diagnostic and statistical manual DSM-IV,

attorneys can go through cross-examining by going through the various prongs of that diagnosis and so forth. That it seems to me, in many, many cases, very competent attorneys do not call Stoll experts. … [¶] So again, because that testimony can indeed be quite damaging, I can't find, even though I know that it didn't occur to [trial counsel] one way or the other to call a Stoll expert, I can't find that he fell below the standard of a competent attorney by failing to call one in this case."

We agree with the trial court's observations and conclude that trial counsel was not deficient for proceeding without a *Stoll* expert. (*Harrington v. Richer* (2011) 562 U.S. 86, 106 ["Rare are the situations in which the 'wide latitude counsel must have in making tactical decisions' will be limited to any one technique or approach."].)

Retrieval of deleted photographs

Defendant argues that trial counsel was ineffective for failing to introduce evidence through a computer expert that any child pornography or photographs of Doe were capable of being retrieved from defendant's iPhone or computer. A detective testified that his forensic examination of defendant's iPhone 6 Plus and a desktop and laptop seized from his home uncovered no child pornography or pictures of Doe. The trial court had invited the jurors to submit written questions which might be posed to the witnesses. In response to one such question, the detective stated that deleted items are not recoverable from the Apple iPhone, and he checked the desktop for deleted items and did not find child pornography. He explained that he could not view some deleted photographs because deleted data mixes with other data in unallocated space and becomes unintelligible. He testified that Apple released the iPhone 6 Plus in September 2014.

Defendant submitted an expert declaration in support of his new trial motion attesting that files deleted from an iPhone "may be recovered by examining … the Apple iTunes backup files on a local computer [and] the Apple iCloud backup," and deleted photos may be partially or fully recovered depending on the data recovery software used.

In his opinion, defendant should have engaged a computer forensics expert to inspect his cell phone and desktop computer, and "if there was ever a pornographic picture generated by [d]efendant, it is highly likely that some evidence would have been found on the desktop."

We find no deficient performance from trial counsel not calling an expert to reinforce a point that was not disputed. Trial counsel's actions, including deciding whether a particular investigation is necessary, must be evaluated based on "counsel's perspective at the time." (*Strickland v. Washington*, *supra*, 466 U.S. at p. 689.) The prosecution's witness testified there was no evidence of any photographs on defendant's computers. Defendant argues that an expert could have established conclusively that he did not take a picture of Doe, but an expert could not have established that defendant never took a picture using a different phone or that he took a picture and deleted it before backing up.

Nor did trial counsel render deficient performance by not questioning the search warrant affiant about her probable cause assertion that many child molesters typically have pornography on their computers. The prosecutor explained in her declaration opposing the new trial motion that trial counsel had considered eliciting such testimony from the affiant but elected not to after realizing that he would open the door to cross-examination on profile evidence and characteristics of a child molester. (*People v. McAlpin*, *supra*, 53 Cal.3d at p. 1299 [expert testimony that a child molester "can be of any social or financial status, any race, any age, any occupation, any geographical origin, and any religious belief or no religious belief at all" and can be "of good or even impeccable reputation[] in the community"].) Trial counsel was not deficient for avoiding that area of inquiry.

Expert testimony on Doe's suggestibility

Defendant argues that trial counsel was ineffective for failing to call an expert in child suggestibility to testify that Doe might have been influenced by her father to believe

she had been molested. "Jurors are generally considered to be equipped to judge witness credibility without the need for expert testimony." (*People v. Wells* (2004) 118 Cal.App.4th 179, 189.) "The general rule is that an expert may not give an opinion whether a witness is telling the truth, for the determination of credibility is not a subject sufficiently beyond common experience that the expert's opinion would assist the trier of fact; in other words, the jury generally is as well equipped as the expert to discern whether a witness is being truthful." (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 82.) There is no authority in California addressing admissibility of expert evidence on child suggestibility, and out-of-state authority is mixed on admissibility. (Compare *Barlow v. State* (1998) 270 Ga. 54, 54 [expert testimony admissible as to proper techniques for interviewing children]; *People v. Johnston* (2000) 709 N.Y.S.2d 230, 236 [expert suggestibility evidence inadmissible as subject matter is within jurors' common knowledge and experience, and opinion did not satisfy general acceptance test for novel scientific technique]; *United States v. Rouse* (8th Cir. 1997) 111 F.3d 561, 571 [expert testimony on suggestive interviewing practices and dangers of implanted memory admissible under *Daubert*; court declined to rule on the admissibility of expert opinion as to whether suggestibility was employed in that case].)

Assuming expert testimony regarding child suggestibility was admissible (see standards discussed in *People v. Kelly* (1976) 17 Cal.3d 24, 30), we find no deficient performance on this record. In support of the new trial motion, a clinical psychologist prepared a report in which she opined that Doe's disclosure and testimony may have been influenced by her father asking her on at least three occasions whether she had been touched by defendant (in "her private area" and "where she goes pee pee"), and by her parents' marital stresses. But the sexually explicit details described by Doe are not suggested by her father's questions, the conflict on the cruise, nor any marital strife. Defendant's expert acknowledged that "a more thorough analysis" was needed in this case (she was actually retained as defendant's *Stoll* expert), and she "would be prepared

to testify to any conclusion from that analysis" should a new trial be granted. A recommendation that the matter be explored in the event of a new trial does not show incompetence for failing to engage a suggestibility expert, particularly since the defense was presented through other witnesses.

Pretext phone call

Defendant argues that trial counsel was ineffective for not seeking to admit the fact of a pretext call and the statements defendant made during that call. " 'A prior statement consistent with a witness's trial testimony is admissible only if either (1) a prior *in*consistent statement was admitted and the consistent statement predated the inconsistent statement, or (2) an express or implied charge is made that the testimony is recently fabricated or influenced by bias or other improper motive, and the consistent statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen.' " (*People v. Ervine* (2009) 47 Cal.4th 745, 779–780.) Defendant's prior statements are not admissible "merely because his 'credibility in general' was attacked during cross-examination." (*Id.* at p. 780.)

Trial counsel was not deficient. "Counsel is under no obligation to make idle or frivolous motions" (*People v. Taylor* (1984) 162 Cal.App.3d 720, 726), and the record makes clear that the trial court's ruling was within its discretion and that further efforts to revisit the matter would have been unsuccessful. The prosecutor moved in limine to exclude statements made by defendant unless first introduced by the People. Trial counsel opposed the motion and sought to introduce the pretext call. The trial court ruled that defendant's statements were inadmissible hearsay, but invited trial counsel to revisit the issue after defendant testified should he believe a basis to admit the statements had been established. The matter was not revisited. In denying the new trial motion, the trial court explained that defendant's statements to Doe's father were unreliable and therefore inadmissible because they were made after the motive to fabricate arose, which happened the moment defendant learned of Doe's accusation. It noted it would have made the

same ruling had defendant raised the issue again in trial, and it would have sustained an objection had trial counsel attempted to elicit from the prosecution's witnesses whether a pretext call had been made and whether any evidence had been garnered from the call.

Lack of criminal history

Defendant argues that trial counsel was ineffective for failing to obtain a ruling on whether his lack of a criminal history in the United States and China was admissible. Jurors submitted several questions for defendant, including whether he had been convicted of any crime in the United States or China. Responding to trial counsel's representation that defendant had no criminal convictions anywhere, the court noted in a sidebar conference that defendant's "prior lawfulness might be a character area that [defendant] may wish to explore," but the court itself would not explore it because decisions regarding whether and what type of character evidence to present were strategic and left to counsel.

Trial counsel asked to recall defendant to ask the question posed by the juror; the prosecutor objected; and the court called a recess to "talk about the type of character evidence that the defense may want to go into." Following the break, the court noted, outside the jury's presence, a discussion had ensued concerning "the issues of character evidence and whether [trial counsel] wants to introduce any further evidence of his client's character. [¶] And we talked about ways [counsel] may or may not explore that, especially in the area of [defendant's] conduct in China and all of that." Counsel then stated he did not wish to introduce further character evidence on defendant's behalf.

Defendant contends trial counsel was ineffective for not obtaining "an unequivocal ruling" with regard to the juror's question. But the record shows that trial counsel elected not to introduce evidence regarding defendant's lack of criminal history, and defendant has not overcome the presumption that his attorney's decision was tactical. No suggestion had been made that defendant had been convicted of any crime, and counsel may have wanted to avoid cross-examination in that area. Defendant argues that the trial

court would not have allowed such inquiry based on the court's comments at the new trial hearing, but the transcript of the new trial hearing does not suggest a ruling either way.[1] Nor does it demonstrate that trial counsel fell below the standard of care by electing not to pursue the admissibility of the unverifiable absence of a criminal record in China.

Closing argument

Defendant argues that trial counsel was ineffective in closing argument "by failing to provide a cogent theory of a defense," and by "utterly fail[ing] to corroborate the position of his own client which was that Doe's father had either persuaded her or convinced her to make a false report of being molested." The record belies his contention.

During closing argument, trial counsel addressed in detail "the million dollar question" of why Doe would lie: "It has everything to do with [Doe's] father. Everything to do with [Doe's] father. You saw him. [¶] Was he a little whacky? Yeah, I think he was. I don't know. But certainly he had anger toward my client. He had anger toward my client. He had an obsession of my client, if you go there. He talked about how gee, 'I thought my wife was still texting him. I thought my wife—I thought they were still exchanging texts when she's sitting next to me in my car because she won't show me the texts. …' [¶] … [I]s he really rational? I don't know the answer to that, but I would not put it past him to come up with a scheme to say well, I got to get this guy out of my life. [¶] He's a threat to my family, he's a threat to me and my wife and I got to get him out. Is it possible that he started talking to [Doe] and planted the seeds of a false memory in her head? I think that's possible. I think it's certainly possible in this

[1] The trial court explained it had not been asked to rule on whether absence of a criminal record constitutes a specific act of truthfulness, and it pondered how much weight a jury would have given to defendant attesting to no criminal record in China given the inability of either party to produce a foreign rap sheet. It noted that lack of a criminal record supports the character trait of a law abiding person, but the relevant inquiry would be whether that character trait is relevant in this case. It found no deficient performance in the decision not to pursue this evidence.

particular case. [¶] Think about it. He was the closest to [Doe]. You heard [Doe's mother], he has a close relationship with [Doe]. He spent the most time with [Doe], because he was the one that would take her and pick her up from her activities on the weekends. [¶] And more curious is his conduct. He says—this is the guy that would randomly ask his child, 'Well, did anything happen to you today after you visited your friends?' showing a lot of concern. He said that was his first child and he would protect her. [¶] But as soon as she says something to him that would set that off, what does he do? He doesn't do anything. He doesn't call the cops, doesn't tell his wife. More importantly, doesn't go and confront [defendant]. 'What the hell are you doing? Did you do this? What the hell are you doing?' [¶] He doesn't do that. Why? Why? That just dumbfounds me. I don't understand why someone wouldn't do that. Either because number one, he's afraid he's going to get in trouble. Why would he be afraid of getting in trouble? Because maybe he's planting these ideas in [Doe's] head. [¶] Maybe he's talking to her, talking about stuff, planting things in her head. That's as plausible an explanation as anything. Because it doesn't—he says the first time he heard it, 'I'm pissed,' but he doesn't do anything. Second time he's more pissed. He still doesn't do anything, and third time he says 'I don't remember.' [¶] It would seem to me if someone reported that to me, I'd be asking the kid, I'd be talking to somebody. I'd be doing something to get down to the bottom of this. I don't think he did anything. [¶] I think all he did was talk to [Doe], continue to talk to her, maybe plant those memories in her head; talking about it, getting her to talk about it and at some point told her to go tell the teacher. I think that is equally an explanation for his conduct. He had motive. He was mad at my client. He was angry. [¶] He thought my client was having some interest in his wife. He also had opportunity because he spent time with [Doe]."

Defendant complains that trial counsel should have argued the odd circumstances of Doe's disclosure, and the motive she may have had for making a false allegation. But "[t]he mere circumstance that a different, or better, argument could have been made is not

a sufficient basis for finding deficient performance by defense counsel." (*People v. Ledesma*, *supra*, 39 Cal.4th at p. 748.) Trial counsel raised a vigorous defense, arguing that the molestations could not have happened in the spring because a tenant lived in the converted garage and defendant did not have a key to the room, and because defendant's wife would be home after work by the time Doe would visit after art class. He argued that molestations could not have happened in the fall because Doe was never out of A.'s sight and A.'s cousin spent her weekends studying in the converted garage. He argued that Doe's father was close to her, and had the opportunity to influence her. His arguments are consistent with the evidence in the case and reflect legitimate defense strategy. (*Yarborough v. Gentry* (2003) 540 U.S. 1, 5–6 ["deference to counsel's tactical decisions in his closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage"].) "The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." (*Id*. at p. 8.)

3. Cumulative prejudice

Defendant argues that the cumulative impact of his trial counsel's deficiencies was prejudicial and warrants a new trial. But as we have not found deficient performance, we do not reach the question of prejudice and the argument must fail.

III. DISPOSITION

The judgment is affirmed.

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Grover, J.

WE CONCUR:

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Greenwood, P. J.

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Elia, J.